

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, February 10, 2020

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, Stennett, and Buckner-Webb

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:01 a.m.

RS 27438 RELATING TO TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES to bring Idaho statute into compliance with federal regulation for legal age to purchase tobacco products.

Alacia Handy, Division of Behavioral Health, Department of Health and Welfare (DHW), said **RS 27438** will bring Idaho into compliance with federal regulation-Title 21, Federal Food, Drug, and Cosmetic Act. The federal regulation changed the legal age to purchase tobacco products and electronic cigarettes from 18 to 21 years of age. This legislation will make that change as well as add the term "young adults" which would add a statement clarifying that young adults may sell and distribute tobacco products within the scope of their employment. This legislation is intended to be cost neutral.

Senator Hill asked if there would be consequences to Idaho if this bill is not passed. **Ms. Handy** responded if the state chooses not to pass this bill, the state would be in direct non compliance with the federal law. It may also lose funding from the state substance abuse block grant. The total block grant is \$500,000 per year and the loss could be up to 10 percent of that amount. In addition, Idaho may have to commit state funds on an ongoing basis for tobacco prevention programs.

MOTION: **Senator Hill** moved to send **RS 27438** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

RS 27596 RELATING TO ELECTIONS to create an emergency absentee ballot.

Chad Houck, Chief Deputy Secretary of State, said **RS 27596** revises provisions in existing election statute pertaining to absentee ballots by expanding the window for an emergency ballot because of hospitalization. This gives the county clerk the ability to make an in-person absentee precinct at the hospital. **Mr. Houck** explained how this process would work.

MOTION: **Senator Souza** moved to send **RS 27596** to print. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 27597 RELATING TO RECALL ELECTIONS to revise provisions for recall petitions and special recall elections.

Chad Houck, Chief Deputy Secretary of State, explained that **RS 27597** revises provisions within the election statute pertaining to the process for ordering a recall

election. The legislation is based on incidences that have occurred in the past, and one incident that is active now. These occurred when the officer that is being recalled is the one that is ordering the recall election. **Mr. Houck** explained how these issues would be resolved. This legislation will eliminate conflict of interest from standing in the way of a properly formatted recall petition to order a recall election.

Senator Vick asked if there was a specific event that inspired this legislation. **Mr. Houck** said there is an existing collective recall effort in a county in Idaho. This also takes responsibility off a hired employee and puts it back on an elected official.

MOTION: **Senator Vick** moved to send **RS 27597** to print. **Vice Chairman Harris** seconded the motion. The motion carried by **voice vote**.

RS 27617 **RELATING TO EXPLODING TARGETS** to prohibit exploding targets during a designated fire season.

Senator Stennett explained that there were no substantive changes made to this bill from the prior year. She listed supporters of the bill and said the instances of fires caused by these devices have increased. She told of one example that cost \$1.5 million in damages. The purpose of the legislation is to prohibit exploding targets during the designated fire season, which is from May 10 until October 20th. She explained what an exploding target was, where they could be purchased, and what they were made of. These types of fires have cost millions of dollars. **Senator Stennett** provided some examples of fires in Idaho and other information related to exploding targets.

MOTION: **Senator Souza** moved to send **RS 27617** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairwoman Lodge passed the gavel to Vice Chairman Harris.

DOCKET NO. 38-0000-1900 **OMNIBUS PENDING RULES IDAPA 38 - Department of Administration.**
38.04.06, 311.02 - page 402
38.04.07, 309.02 - page 407
38.04.08, 312.02 - page 413
38.04.09, 311.02 - page 422

Keith Reynolds, Deputy Director, Department of Administration (DOA), presented the omnibus pending rules. He explained that concerns surrounding the facilities rules, specifically items subject to search, prompted them to seek more information and they met with House and Senate members since the original committee hearings. These conversations led them to ask the Attorney General's Office for an opinion.

Brian Kane, Assistant Chief Deputy, Attorney General's Office, said an analysis of the Idaho Administrative Rule 38.04.06.311, concerning items subject to search, resulted in the opinion that these rules do not violate the Fourth Amendment. To enhance security, guards may inspect personal bags upon the owner's consent on Capitol Mall property.

In response to questions from Senator Hill and Senator Stennett, **Brian Kane** said the public has the ability to refuse checks from Capitol security and that action in response to a prohibited item is determined by the type of item.

Senator Souza asked if a police officer has the same level of security as a security guard on Capitol Mall premises. **Mr. Kane** explained that law enforcement officers have an entire body of law in which they operate. This is a rule specific to the Capitol Mall policy. Depending on the circumstances, the law enforcement officer may have a heightened duty.

Senator Hill said that he supported the docket but asked that they consider language in the future that would say, "the security officer may inspect bags with consent from the owner."

MOTION: **Chairwoman Lodge** moved to approve **Docket No. 38-0000-1900**. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL: Vice Chairman Harris passed the gavel to Chairwoman Lodge.

S 1274 **RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT** to establish an independent Office of Administrative Hearing.

Senator Burgoyne, District 16, said that **S 1274** creates an independent Office of Administrative Hearings (OAH) in the Department of Self-Governing Agencies. Agencies currently pay for their own administrative hearings from budgeted funds or from supplemental appropriations. Once in effect, this legislation will allow agencies to pay the office for the hearings it conducts. These costs are not expected to exceed what they are currently spending. He explained the intent is to eliminate bias in administrative hearing processes and that the Idaho Department of Water Resources (IDWR) is outside of the bill's scope. IDWR suggested changes by adding additional language. He asked that **S 1274** be sent to the 14th Order for possible amendment. He did not believe that the IDWR's amendments were substantive changes to the bill, except one facet: a clarification that they can continue to do contested hearings under the American Planning Association (APA). He stated that those hearings would not be handled by hearing officers in the independent office.

Brian Kane, Assistant Chief Deputy, Office of the Attorney General (AG), reviewed the AG's report. In response to Mr. Kane, **Senator Burgoyne** said when agencies are involved in administrative hearings and make rulings on their own decisions, hearing officers outside of those agencies may ensure less bias in decision making. An agency who appoints its own staff to judge the agency's actions on a contentious issue gives the perception of biased protocol. A lack of confidence in the system may ensue from plaintiffs.

DISCUSSION: In response to a question from Senator Souza, **Senator Burgoyne** said the interim committee took testimony from chief administrative hearing officers from other states that had created their own independent offices. The experience was good enough that other agencies who had not been included with the independent hearing offices wanted to be included at some point. Those offices tended to attract the participation of other agencies. There is a clause in this legislation where Idaho agencies may opt to have their hearings conducted by the independent OAH.

Mr. Kane said the AG was not consulted on the legislation and shared his concern that it affects a unit within their office. He explained there is a difference between actual alleged bias and perceived bias. The primary issue their office has is over their Fair Hearing Unit (FHU), established in 2016. The FHU conducts all administrative appeal hearings for the DHW which spans 6 divisions and 40 programs. The unit provides the state with significant cost savings in excess of \$250,000 annually. They have a high functioning, efficient unit. They ask that this unit be exempted from application of this legislation. **Mr. Kane** said he is not in opposition conceptually, he is here to ask that the good work their office has undertaken be preserved. The AG is ready to assist in an orderly transition.

Senator Vick asked if the FHU could handle the proposed work of the OAH. **Mr. Kane** replied that they could take on this work and do it well, but out of respect for this effort, their office never felt it was appropriate to insert themselves into the conversation and make that claim.

Senator Anthon asked if there is a scenario where the AG would defend the State of Idaho against the claim of another and if a hearing officer under the AG's supervision would make a decision. **Mr. Kane** responded yes.

In response to questions from Senator Souza, **Mr. Kane** explained how the FHU came into being and how it operates. The FHU was prompted by requirements from the Centers for Medicare and Medicaid Services (CMS), a Federal Health and Human Services entity. The State of Idaho had used private contractors as hearing officers before federal law mandated they change. He said federal agents approved their model. **Mr. Kane** said the FHU would have to ensure elements pertaining to their federal requirements must be present within their procedures. He agreed with Senator Souza that the intent of this proceeding was to strike down perception bias and to allow for the public to receive a fair dealing and to breathe confidence into the acts of government.

Gary Spackman, Director of the Idaho Department of Water Resources (IDWR), responded to Senator Stennett and explained why IDWR should not be included and their need for use of the APA. If they were exempted, they would have no underlying statutory basis for their administrative hearings and they would not have other provisions of the Administrative Procedures Act (APA) that governed their processes. The IDWR is adamant they not be included but still have the opportunity to use the APA as a basis for their contested case hearings.

Senator Burgoyne said they are ready to accommodate the IDWR's suggestions in the 14th Order of Business. The IDWR and their board are unaffected by this legislation. He thinks expanding the FHU in the OAG would not be appropriate. He did agree that the office should be incorporated into the OAH. He said It defeats the purpose of this legislation for the AG to have the same hearing officer represent the agency and plaintiff. The agency will bring hearing officers from the FHU to use their expertise. The Attorney General is on the advisory committee that will help set up the office.

Senator Winder asked the Committee to keep the hearing open and bring it back as soon as possible, no later than February 14, 2020, for a chance to either create a new RS number or to amend **S 1274**.

MOTION: **Senator Winder** moved that **S 1274** be held in Committee until the Friday, February 14th meeting. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1281 **RELATING TO CONSTRUCTION OF STATUTES** to eliminate inactive provisions of law.

Colby Cameron, Regulatory Analyst, Division of Financial Management, explained the intent of **S 1281** was to clean up a statute that does not have the same function as the rest of the statutes.

MOTION: **Vice Chairman Harris** moved to send **S 1281** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S 1282 **RELATING TO BOARD OF CEMETERIANS** to eliminate an inactive licensing board.

Mr. Cameron said in 1989, a statute was introduced to establish a Board of Cemeterians and that code created provisions for appointments. This board was never appointed, no license was ever provided, and the institutional knowledge has been lost. They were not able to determine why appointments were not made after it was placed in statute. These regulations are in code and are not functioning at this time.

MOTION: **Vice Chairman Harris** moved to send **S 1282** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion passed by **voice vote**.

MINUTES APPROVAL: **Senator Winder** moved to approve the Minutes of January 29, 2020. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 9:43 a.m.

Senator Lodge, Chair

Twyla Melton, Secretary

Bryce DeLay
Assistant to the Secretary